

REMARKS

Election of Species

Applicants affirm the prosecution of the invention relating to claims 75-77, 96-105, and 108-110. Applicants note that since claim 75 is generic, should that claim be allowed, claims 106, 107, 111, and 112 should be considered for allowance.

35 U.S.C. §112 Rejection and Claim Objections

The grounds of rejection and objection note that it is unclear with respect to claims 75 and 108 as to whether the surgical component is a part of the fastener recited in these claims. Applicants respectfully submit that the surgical component need not be a structural part of the fastener, and have amended the claims in a manner thought to resolve any confusion by the Examiner. Likewise for the recitation of the “vessel” which is not a structural part of the present invention.

Further, Applicants have amended claims 97-99, removing the term “said second configuration” and more clearly defining this feature of the spring in a compressed state.

35 U.S.C. §102(b) Rejection – Marks

Claims 75-77, 96, 100-105 and 108-110 stand rejected as being anticipated by Marks (U.S. Patent No. 5,108,420). Marks is related to devices and methods used to occlude (i.e. block blood flow through) an aperture within a body surface. Specifically, Marks relates to devices and methods to occlude cardiovascular septal defects. Accordingly, a first difference between the present Invention and Marks is that Marks discloses an occluding device, whereas the present invention discloses and claims a fastener.

Since the inventions seek to solve different problems, they also operate in a different manner. In the present invention, as recited in independent claims 75 and 108, a compressive force is recited with regards to the first and second portions of the fastener to secure a surgical component to a vessel. Quite differently, the Marks device shown in Figure 6 (noted in the Office Action as disclosing the present invention) does not use a compressive feature. In fact, Applicants respectfully submit that Marks would teach away from this feature. In Marks, Helix 62a (recited in the Office Action) is formed on the distal side of defect 68', preferably by the coiling of wire 64, nitinol for example, in response to a temperature change, upon body temperature contact or by retraction of spring steel into its "relaxed" (preprogrammed) configuration (see col. 5, lines 34-38). As taught by Marks, its occlusion wires relax into a programmed shape after they are passed through the catheter, which would not suggest the compressive feature of the present invention. Therefore, Applicants respectfully submit that the claims are allowable at least based on these claimed differences over Marks.

35 U.S.C. §102(b) Rejection – Fleischman et al.

Claims 75 and 97-99 stand rejected as being anticipated by Fleischman et al. (U.S. Patent No. 6,132,438). Applicants respectfully traverse this rejection. To more clearly define the claims in view of the 35 U.S.C. §112 Rejection, Applicants amended independent claim 75 to recite "a flexible fastening assembly, the fastening assembly having a first portion and a second portion *operable to secure a surgical component to a vessel via a compressive force.*" Claim 75 further recites a position that the first and second portions are disposed with respect to the surgical component and the vessel.

Fleischman et al. is silent with respect to any use of its expandable anchor 116 or suture 126 being operable to secure a surgical component to a vessel via a compressive force. Rather, Figures 29 and 31A-31C, recited in the Office Action, show a mechanism which creates a purse-string-like constriction around the interior surface of an appendage 16 or 17 (or other body cavity). This arrangement enables pulling of adjacent walls together, thus forming a tightened sack in which the pouch of the appendage is separated from the remainder of the atrium (see col. 13, lines 10-15). That is, Fleischman et al. teaches a device, such as expandable anchor 116, that grabs or otherwise attaches itself to an appendage wall and either inverts or otherwise pulls the walls of the appendage together to reduce the size of the region of potential blood stasis, and consequently the volume of the affected atrium. Securing a surgical component to the appendage via a compressive force is not contemplated or suggested. As such, Applicants respectfully submit that claims 75 and 97-99 distinguish from Fleischman et al. and are therefore allowable.

In view of the foregoing amendments and remarks, Applicants respectfully submit that the claims of the present invention define subject matter patentable over the references cited by the Office and that the application is in condition for allowance. Should the Office believe that anything further is desirable to place the application in better condition for allowance, the Office is invited to contact Applicants' undersigned attorney at the below listed telephone number.

No fee is thought required for consideration of this Amendment. If a fee is required, the Commissioner is hereby authorized to charge any deficiency or credit any overpayment to deposit account number 03-2469.

Moreover, if the deposit account contains insufficient funds, the Commissioner is hereby invited to contact Applicant's undersigned representative to arrange payment.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "John N. Coulby", is written above a horizontal line.

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